

REMARKS

In accordance with the foregoing, new claim 26 has been added. Claims 1-2, 4-6, 8-10, 12-14, 16-17, 19-21 and 24-26 are pending and under consideration. Claims 9-10, 12-14, 16, 21 and 23-25 are allowed.

Using independent claim 1 as an example, this claim recites that the controller controls the heater driver and the drum driver to restart the heaters and the kneading drums, respectively, when the controller determines that the door is closed within a predetermined time elapsed since the door is opened.

The Examiner admits that the cited references do not teach these features, but instead states that these are functional features that do not result in any structural differences.

However, there is nothing intrinsically wrong with the use of functional claim language. *In re Swinehart and Sfiligoj*, 169 USPQ 226 at 228. However, where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may, in fact, be an inherent characteristic of the prior art, it possesses the authority to require the applicant to prove that the subject matter shown to be in the prior art does not possess the characteristic relied on. *Id.* at 229.

It can be inferred from *In re Swinehart and Sfiligoj* that functional distinctions can distinguish over the prior art, provided that the applicant can prove the prior art does not possess the relied-upon feature. In Morino, the cooking period after restarting is changed in accordance with the period of opening the door during cooking and the cooking processes. Morino, col. 17, ln. 52-55. For example, the sum of periods P3' (before interruption) and P3" (after interruption) of the fermentation process is adjusted by α , which is smaller than the period of interruption p. Morino, col. 18, ln. 22-26. However, there is no determination whether p exceeds a certain value, thus, the restarting can conceivably occur at any value of p. Thus, it is submitted that this reference does not possess the claimed feature of the controller determines that the door is closed within a predetermined time elapsed since the door is opened.

Morino also does not teach comparing a time while a door of the bread maker is open with a predetermined time; and ending a bread making process if determined that the time the door is open is greater than the predetermined time, as claimed in new claim 26.

Accordingly, withdrawal of the rejection is requested.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

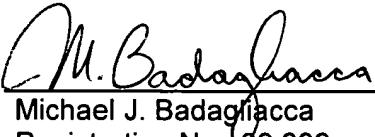
Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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